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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

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March 15, 1995

Mr. William Caton  
Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Washington, D.C. 20554

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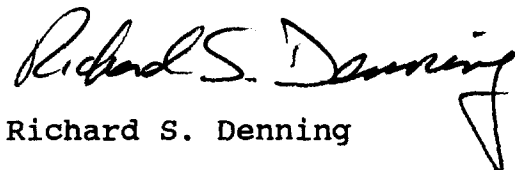
Re: Erratum  
PP Docket No. 93-253  
Comments of Page Call, Inc. filed March 14, 1995

Dear Mr. Caton:

On March 14, 1995, Page Call, Inc. ("Page Call") filed Comments in response to PCS PrimeCo's Application for Review of the Federal Communications Commission's PCS bidding credit and unjust enrichment rules. Upon subsequent review of Page Call's pleading, we identified several typographical errors which we now seek to correct. Accordingly, please find enclosed revised pages 2 & 3 of Page Call's submission. Please substitute the attached pages for those filed yesterday in the above-referenced proceeding. For your convenience, we have also included a corrected copy of the filing in its entirety.

Should you have any questions, please do not hesitate to call the undersigned.

Respectfully submitted,

  
Richard S. Denning

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out. While Page Call successfully bid for three out of thirty available regional licenses, the forty percent (40%) bidding credit the Commission offered to minority and women-owned small businesses essentially evaporated during the course of the auction. In Page Call's view, bidding credit rules have not afforded designated entities the benefit of a true "discount" on the price of PCS licenses. Moreover, the Commission's Rules penalize designated entities by requiring the "recapture" of the bidding credit, even when no "enrichment" has occurred. Finally, the bidding credit and recapture provisions will prevent designated entities from obtaining capital necessary to build-out their systems.

Page Call submits that the availability of the bidding credits, in conjunction with the unjust enrichment provisions applied to designated entities throughout the ten year license term, will disadvantage designated entities by resulting in gross bids that are significantly above market value and, as a result, will significantly limit the ability of these entities to transfer or assign their licenses after the five-year holding period, even when no true discount benefit has been achieved by the availability of the bidding credit. In addition, the designated entities are disadvantaged by the failure to provide an exception to its unjust enrichment rules when a designated entity is in financial distress.

Page Call agrees with PCS PrimeCo that the availability of bidding credits to designated entities will not reduce the

cost of acquiring PCS licenses for these companies. In the Regional Narrowband PCS auctions, the designated entities net price was roughly equivalent to market. The benefits of the bidding credit, therefore, did not enhance the ability of designated entities to compete in the auctions. The impact of the availability of bidding credits, thus far, has required designated entities to pay a premium gross price for the PCS licenses they have won.<sup>2/</sup>

The Commission's unjust enrichment provisions compound the adverse impact the bidding credits have on the participation of designated entities in the competitive bidding process. Having agreed to pay a premium gross price for the licenses they hold, designated entities are subjected to recapture provisions which specifically penalize licensees who sell their licenses to non-designated entities during years five to ten, even when they actually paid a market net price for their licenses as compared to non-designated entity licensees holding comparable licenses. In effect, the rules require designated entities to compensate the Commission for a benefit that does not exist.<sup>3/</sup>

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2/ In contrast, Page Call believes that the Commission's installment payment plan provides designated entities with important benefits in the bidding process. Accordingly, Page Call does not oppose the adoption of unjust enrichment provisions as they relate to the availability of flexible payment schedules.

3/ In addition, the cost to any potential buyer of the license will be significant as it must pay the Commission a price far in excess of the value of the license as reflected at the auctions, exclusive of construction, marketing and operational costs.

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C.**

In the Matter of	)	
	)	
Implementation of Section 309(j)	)	PP Docket No. 93-253
of the Communications Act -	)	
Competitive Bidding	)	
	)	

**COMMENTS OF PAGE CALL, INC.**

Page Call, Inc. ("Page Call"), by its attorneys, hereby submits these comments in response to PCS PrimeCo's ("PrimeCo") Application for Review filed February 27, 1995.<sup>1/</sup> Page Call files this pleading to inform the Commission that its bidding credit rules may operate to actually inhibit the participation of minority and women-owned entities in the provision of Personal Communications Service ("PCS") by increasing the costs of license acquisition and by penalizing designated entities who may be required to or choose to transfer, or otherwise dispose of their licenses, during the initial ten year license term.

Although Page Call supports the Commission's goal of encouraging long-term designated entity involvement in the PCS marketplace, the broadband PCS bidding credit and unjust enrichment provisions do not accomplish this goal. Page Call's own experience in the Regional Narrowband PCS auction bears this

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<sup>1/</sup> See Application for Review, Implementation of Section 309(j) of the Communications Act - Competitive Bidding, PP Docket No. 93-253 (filed February 27, 1995) (hereafter "Application"). Pursuant to Section 1.115(d) of the Federal Communications Commission's (the "Commission") Rules, these comments are timely filed within 15 days of the filing of PrimeCo's Application. See 47 C.F.R. §1.115(d).

out. While Page Call successfully bid for three out of thirty available regional licenses, the forty percent (40%) bidding credit the Commission offered to minority and women-owned small businesses essentially evaporated during the course of the auction. In Page Call's view, bidding credit rules have not afforded designated entities the benefit of a true "discount" on the price of PCS licenses. Moreover, the Commission's Rules penalize designated entities by requiring the "recapture" of the bidding credit, even when no "enrichment" has occurred. Finally, the bidding credit and recapture provisions will prevent designated entities from obtaining capital necessary to build-out their systems.

Page Call submits that the availability of the bidding credits, in conjunction with the unjust enrichment provisions applied to designated entities throughout the ten year license term, will disadvantage designated entities by resulting in gross bids that are significantly above market value and, as a result, will significantly limit the ability of these entities to transfer or assign their licenses after the five-year holding period, even when no true discount benefit has been achieved by the availability of the bidding credit. In addition, the designated entities are disadvantaged by the failure to provide an exception to its unjust enrichment rules when a designated entity is in financial distress.

Page Call agrees with PCS PrimeCo that the availability of bidding credits to designated entities will not reduce the

cost of acquiring PCS licenses for these companies. In the Regional Narrowband PCS auctions, the designated entities net price was roughly equivalent to market. The benefits of the bidding credit, therefore, did not enhance the ability of designated entities to compete in the auctions. The impact of the availability of bidding credits, thus far, has required designated entities to pay a premium gross price for the PCS licenses they have won.<sup>2/</sup>

The Commission's unjust enrichment provisions compound the adverse impact the bidding credits have on the participation of designated entities in the competitive bidding process. Having agreed to pay a premium gross price for the licenses they hold, designated entities are subjected to recapture provisions which specifically penalize licensees who sell their licenses to non-designated entities during years five to ten, even when they actually paid a market net price for their licenses as compared to non-designated entity licensees holding comparable licenses. In effect, the rules require designated entities to compensate the Commission for a benefit that does not exist.<sup>3/</sup>

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2/ In contrast, Page Call believes that the Commission's installment payment plan provides designated entities with important benefits in the bidding process. Accordingly, Page Call does not oppose the adoption of unjust enrichment provisions as they relate to the availability of flexible payment schedules.

3/ In addition, the cost to any potential buyer of the license will be significant as it must pay the Commission a price far in excess of the value of the license as reflected at the auctions, exclusive of construction, marketing and operational costs.

The impact of this bidding credit recapture is particularly severe for designated entities in financial distress who are prevented from selling their licenses to potential buyers who are simply unwilling to incur the additional cost of repaying a bidding credit that was afforded to the designated entity in the bidding process. Unless potential lenders can be assured that financially distressed designated entities will be permitted to transfer their licenses to non-designated entities, at least as a last resort, they will be unwilling to advance the funds necessary to build out designated entity-owned PCS systems.


Page Call requests that the Commission eliminate the availability of the bidding credits and delete the related unjust enrichment provisions from its Rules. Experience in the auctions has illustrated that the overall bidding credit package may discourage future participation of designated entities in the competitive bidding process. Moreover, the unjust enrichment provisions unfairly penalize designated entities when no benefit is received from the bidding credits and impede the ability of designated entities to obtain much needed capital to build out their systems.

Elimination of the bidding credits would provide more uniformity to the Commission's rules. Moreover, once the Commission eliminates these bidding credits, the issues raised in PrimeCo's Application for Review will become moot. Page Call submits that designated entities would be better served if no bidding credits were available to skew the auctions and

disadvantage the entities identified to be the intended  
beneficiaries of the bidding credit provisions.

Respectfully submitted,

PAGE CALL, INC.

  
Leonard J. Kennedy  
Laura H. Phillips  
Richard S. Denning

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March 14, 1995

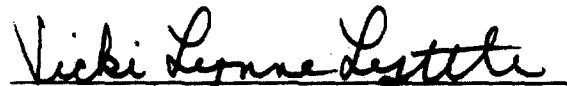


**CERTIFICATE OF SERVICE**

I, Vicki Lynne Lyttle, a secretary at Dow, Lohnes & Albertson, hereby certify that on this 15th day of March, 1995, I caused a copy of the foregoing Letter, corrected pages and corrected pleading to be served by first-class mail, postage prepaid, to the following:

William L. Roughton, Jr.  
Bell Atlantic Personal Communications, Inc.  
1310 North Courthouse Road, 5th Floor  
Arlington, VA 22201

Kathleen Q. Abernathy  
AirTouch Communications, Inc.  
1818 N Street, N.W., Suite 800  
Washington, D.C. 20038

  
Vicki Lynne Lyttle